***Miranda*: "Public safety" and investigative exceptions……Revised 12/2009**

In *Miranda v. Arizona*, 384 U.S. 436 (1966), the United States Supreme Court held that the Fifth Amendment requires police to give suspects certain warnings before subjecting them to custodial interrogation. However, the Court excluded from the definition of "custodial interrogation" general on-the-scene police questioning for the purpose of investigating crime. 384 U.S. at 477-78. *See State v. Berlat*, 136 Ariz. 488, 489, 666 P.2d 1097, 1098 (App. 1983). The *Miranda* Court explained that its decision was "not intended to hamper the traditional function of police officers in investigating crime." *Miranda* at 477. The Court stated:

> When an individual is in custody on probable cause, the police may, of course, seek out evidence in the field to be used at trial against him. Such investigation may include inquiry of persons not under restraint. General on-the-scene questioning as to facts surrounding a crime or other general questioning of citizens in the fact-finding process is not affected by our holding. It is an act of responsible citizenship for individuals to give whatever information they may have to aid in law enforcement. In such situations the compelling atmosphere inherent in the process of in-custody interrogation is not necessarily present.

Id. at 477-78.

Defendants sometimes misconstrue *Miranda* to claim that the police should read them their *Miranda* rights before asking *any* questions at the scene of a crime, but that is clearly not required. General "what happened" types of questions at a crime scene are not calculated to obtain incriminating statements and are not included in the definition of "custodial interrogation." *Rhode Island v. Innis,* 446 U.S. 291, 301 (1980). In *State v. Vickers*, 159 Ariz. 532, 538, 768 P.2d 1177, 1183 (1989), while in prison, Vickers threw flaming hair tonic on a fellow prisoner, Buster Holsinger. Responding to the smoke, a prison officer found the fire in Holsinger's cell with Vickers on the floor outside the cell. The officer dragged Vickers to safety and asked, "What happened?"

Vickers said, “I burned Buster.” The officer asked, “Is he dead?” and Vickers replied, “He should be, he’s on fire.” The Arizona Supreme Court found that the officer’s questions were not intended to elicit an incriminating response from Vickers, but rather were general on-the-scene questioning that did not require prior *Miranda* warnings. The Court also found that even if the questions were “custodial interrogation,” the statements would be admissible under the “public safety exception,” citing *New York v. Quarles,* 467 U.S. 649, 655 (1984).

In *State v. Long*, 148 Ariz. 295, 714 P.2d 465 (App. 1986), police responded to an apparent arson fire at the defendant’s house. The defendant had been seen to leave the house and go to a nearby mountainous area, so police followed him to ask him about the fire. When they approached, the defendant threatened suicide by jumping off a cliff. During the course of an hour-long discussion directed at calming the defendant, an officer asked him, “What happened down there?” The defendant answered, “If I want to burn my fucking house, I will.” The defendant’s statement was admissible. The Court of Appeals said, “It is clear that it is permissible for a police officer to ask a homeowner what the cause of a fire in his house was without first giving *Miranda* warnings.” *Id*. at 296, 714 P.2d at 466. *See also State v. Dickey*, 125 Ariz. 163, 167-168, 608 P.2d 302, 306-307 (1980), in which an officer arrived at the scene of a shooting and asked Dickey and another man, “Who shot him?” Dickey said he had shot the victim and, in response to further questions, told the officer where the gun was and why he shot the victim. The Arizona Supreme Court held that Dickey’s statements were admissible. The Court noted that the officer’s questions at the crime scene were “brief and uninterrupted” and were

intended “to enable the police to ascertain what had happened, who was involved, and whether a crime had actually been committed.” *Id*. at 167.

The United States Supreme Court has also recognized a “public safety” exception to the *Miranda* rule. *New York v. Quarles*, 467 U.S. 649 (1984). In *Quarles*, a woman reported to police that a man armed with a gun had just raped her and then entered a grocery store. Police went into the store and found Quarles, who had an empty shoulder holster. The police asked Quarles where the gun was. Quarles told them and the officers found the gun. Quarles argued that his statement and the gun should have been suppressed as the product of custodial interrogation without any *Miranda* warnings. The Court disagreed, saying that the abandoned gun posed a threat to public safety, and stated, “There is a ‘public safety’ exception to the requirement that Miranda warnings be given before a suspect's answers may be admitted into evidence.” *Id*. at 655-656.

Arizona courts have applied the “public safety” exception in various situations, recognizing that police officers need not read *Miranda* rights before asking preliminary questions for their own safety as well as the safety of others. In *State v. Stanley*, 167 Ariz. 519, 809 P.2d 944 (1991), Stanley reported that his wife and daughter were missing. Investigating officers found bloody items at Stanley’s business. When they showed these to Stanley, he began to cry and an officer asked him if he was all right. Stanley then confessed that he had shot his wife and daughter. The officers questioned him whether the victims might still be alive. Stanley said they were dead and told police where he had hidden the bodies. The Arizona Supreme Court found that the officer’s questions about whether the victims were alive were justified under the public safety

exception established in *Quarles*, *supra*. *State v. Stanley*, 167 Ariz. 519, 524, 809 P.2d 944, 949 (1991).

Similarly, in *State v. Ramirez*, 178 Ariz. 116, 871 P.2d 237 (1994), neighbors called police about screams and noises coming from an apartment. When police arrived, they saw a body lying on the floor, a bloody knife blade, and the defendant, covered with blood. The officer asked, "What's going on?" The defendant responded, "We had a big fight." The officer asked who else was inside, and the defendant answered, "My girlfriend and her daughter." The officer asked if anyone else was hurt and the defendant said, "Yeah, they're hurt pretty bad. We're all hurt pretty bad." *Id*. at 120, 871 P.2d at 241. The defendant moved to suppress these statements because the officer did not read him his *Miranda* warnings before asking the questions. The Arizona Supreme Court held that the officer's questions were appropriate under the public safety exception because the questions were geared toward eliciting information that the police needed to protect themselves and anyone else in the apartment. *Id*. at 124, 871 P.2d at 245 (1994).

In *In re Roy L.*, 197 Ariz. 441, 4 P.3d 984 (App. 2000), a school security officer told a police officer that there was a juvenile with a gun at a market near the school. The officer used binoculars to see the gun. The officer then went to the market, drew his gun, and asked the juvenile if he had a gun; he admitted he had a gun and the officer patted him down and found the gun. The juvenile argued that his admission and the gun should have been suppressed, but the Court of Appeals found the question was justified by the officer safety exception to the *Miranda* rule because the question was designed

to protect the officer and others in the area. *In re Roy L*., 197 Ariz. 441, 446, ¶ 15, 4 P.3d 984, 989 (App. 2000).

There is also a "private safety" or "rescue doctrine" exception to *Miranda* requirements. *State v. Londo*, 215 Ariz. 72, 158 P.3d 201 (2006). The "rescue doctrine" exception applies only when a suspect "is reasonably considered to be in urgent need of rescue to avoid serious injury or death." *Id*. at 75, 158 P.3d at 204. In *Londo*, the suspect was in custody for sale of narcotics and began swaying, vomiting, and frothing at the mouth. The officer asked Londo if he had swallowed crack cocaine and Londo admitted that he had and then was taken to the emergency room. For the exception to apply, the officer must act with an "objectively reasonable concern of immediate danger." *Id.* at 76, 158 P.3d at 205. Additionally, there is a three part test for determining if the "rescue doctrine" exception applies: "1) an urgent need, and no other course of action promises relief; 2) the possibility of saving a human life by rescuing a person in danger; and 3) rescue is the primary purpose and motive of the interrogator." *Id*.